IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 20TH APRIL 2007 / 30TH CHAITHRA 1929

Bail Appl..No. 2177 of 2007

(CRIME NO.137/06, HILL PALACE POLICE STATION, THRIPPUNITHURA)
AGAINST THE JUDGEMENT/ORDER IN BA.1321/2007

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PETITIONER/ACCUSED NO.2

MOHAMMED SALI, S/O ABDULLA MOULAVI,
AGED 19 YEARS, SALAM MANZIL, VADUTHALA JETY
BHAGOM, AROOKUTTY, CHERTHALA.

BY ADV. SRI.MATHAI VARKEY MUTHIRENTHY

RESPONDENTS/COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
CIRCLE INSPECTOR OF POLICE, HILL PALACE POLICE
STATION, TRIPUNITHURA, THROUGH THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA.

BY SRI.P.G.THAMPI, D.G.P.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

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B.A.NO.2177 OF 2007

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Dated this the 20th day of April, 2007

ORDER

This is an application for bail filed by the second accused in S.C.No.436/06 on the file of the Second Additional Sessions Court, Ernakulam. The offences alleged against the accused are under Sections 143, 147, 148, 449, 324, 326, 307, 302, 427, 201, 120B r/w Section 149 IPC, Sections 3 and 4 of the Explosive Substances Act and Section 27 of the Arms Act. The petitioner was arrested on 29.3.2006 and he is in judicial custody. It is stated that some of the accused have been granted bail. The petitioner applied for bail before this court in B.A.1321/07, which was dismissed by Annexure I order dated 14.3.2007. In Annexure I order this court took note of the facts and circumstances of the case in detail and also noticed that the petitioner was involved in Crime No.55/06 of Mulanthuruthy Police Station, Crime No.23/06 of Poochattil Police Station, Crime No.49 of Edakkad Police Station and Crime No.77/06 of Hill Palace Police Station. In Annexure A1 order, this court

noticed that some of the accused persons who were granted bail have absconded and that there are instances of the prosecution witnesses being threatened by some of the accused persons.

2. The learned counsel for the petitioner pointed out that the bail application submitted by accused No.11 as Bail Application No.4198/06 was disposed of by Annexure A2 order dated 20th July, 2006 wherein this court directed the learned Magistrate to commit the case within one month to the Sessions Court and also directed the Sessions Court to dispose of the case within two months from the date of receipt of records. The counsel for the petitioner submits that though the case was posted for trial to 22.2.2007, a report was filed by the Public Prosecutor on 21.2.2007 stating that the State wanted to appoint a Special Prosecutor in the case and seeking adjournment on that ground. The learned Sessions Judge accepted the request made by the Public Prosecutor and issued stop memo to the witnesses to whom summons were already issued. The counsel for the petitioner submits that only because of the laches on the part of the Government, a Special Prosecutor was not appointed

which resulted in the case being adjourned from time to time. Now, the case is posted to 23.5.2007. He added that the case is posted to 23.5.2007 not for the examination of witnesses but it is only a formal posting.

3. Sri.P.G.Thampi, Director General of Prosecution submits that there are some delay and laches on the part of the Government in the case of appointment of the Special Prosecutor but that is not a ground for enlarging the second accused/petitioner on bail as he is involved in several other cases. It is submitted that release of the petitioner would be against the interests of the general public and his presence in the society would be detrimental to the peace in the locality.

4. Taking note of the fact that the case has reached at the final stage, that some of the accused have absconded and that there are allegations of severe threat from some of the accused to the prosecution witnesses, I am not inclined to accept the submission made by the learned counsel for the petitioner that the petitioner deserves to be released on bail. It is true that petitioner is undergoing detention from 29.3.2006. If the

learned Sessions Judge has not complied with the directions issued by this court, it is for the petitioner to take appropriate steps for redressal of his grievance but that by itself is not a ground for granting bail to the petitioner. I do not find any ground to grant bail to the petitioner.

5. The learned Director General of Prosecution submits that he will do all that is necessary for the early disposal of the case. He ensures that the prosecution will co-operate with the court to enable the court to schedule the case for trial at the earliest. This submission is recorded. The learned Sessions Judge shall comply with the directions already issued by this court and also shall make every endeavour to dispose of case at the earliest.

Bail application is dismissed.

(K.T.SANKARAN)
JUDGE

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